

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE CITY OF COTTAGE GROVE

In the Matter of the Off-Sale Liquor
License of MGM Liquor Warehouse.

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

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The above-entitled matter came on for hearing before Administrative Law Judge George A. Beck at 9:30 a.m. on Thursday, May 11, 2000 in the Administrative Conference Room of Cottage Grove City Hall in the City of Cottage Grove, Minnesota.

Joe Y. Yang, Esq. of the firm of Kennedy and Graven, Chtd., Suite 470, 200 South Sixth Street, Minneapolis, MN 55402, represented the City of Cottage Grove at the hearing. The Licensee, MGM Liquor Warehouse, was represented by John J. Lanners, President, F.T.L. Corporation, 1580 Woodlane Drive, Woodbury, MN 55125. The record closed at the conclusion of the hearing on May 11, 2000.

This report is a recommendation, not a final decision. The City Council of the City of Cottage Grove will make its final decision after reviewing the hearing record. The City Council may adopt, reject or modify these Findings of Fact, Conclusions and Recommendation. Under Minnesota law,^[1] the City Council may not make its final decision until after the parties have had access to this report for at least 10 days. During that time, the City Council must give each party adversely affected by this report an opportunity to file objections to the report and to present argument. The parties should contact Caron Stransky, City Clerk, City of Cottage Grove, 7516 80th Street, Cottage Grove, MN 55016 to find out how to file objections or present argument.

STATEMENT OF ISSUE

The issue in this contested case proceeding is whether an employee of the licensee made a sale of intoxicating liquor to a minor in violation of Minnesota law^[2] and if so, what disciplinary action is appropriate.

Based upon the record in this matter, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. MGM Liquor Warehouse is a retail off-sale liquor store which has done business in the City of Cottage Grove for sixteen years.

2. The City of Cottage Grove Police Department maintains an alcohol and tobacco compliance program that performs at least two compliance checks each year on each vendor of alcohol or tobacco doing business in the City of Cottage Grove.

3. On or about January 8, 2000, the City sent each liquor store, including MGM Liquor Warehouse, a letter advising them of the compliance check policy. The letter asked MGM to review with its employees the state laws governing the sale of alcoholic beverages and to ask for proper identification. It offered to provide a police officer to give a ten to fifteen minutes informational talk on alcohol sales laws, if requested.^[3]

4. City of Cottage Grove police officers were conducting compliance checks on liquor stores in Cottage Grove on February 26, 2000. The minors used for compliance checks are told by the officers to show their current identification, if asked, and if asked how old they are to give their accurate date of birth. They are told not to provide any false information.

5. On February 26, 2000 at approximately 5:44 p.m. Officers Melinda Schafer and Michael Coffee, Jr. drove to the MGM Liquor Warehouse in Cottage Grove with a minor, Eric Gruber. Mr. Gruber is a firefighter/emergency medical technician for the City. Mr. Gruber had in his possession a valid Wisconsin driver's license with the corner clipped that showed his date of birth as March 21, 1979. Mr. Gruber had recently moved from Hudson, Wisconsin to Cottage Grove and also had a yellow receipt indicating that he had applied for a Minnesota driver's license.

6. The police officers instructed Mr. Gruber to enter the liquor store and attempt to purchase alcohol. Mr. Gruber entered the store, picked up a 12 pack of beer and took it to the cashier. The cashier, a 64 year old man, asked Mr. Gruber for his identification. Mr. Gruber produced his Wisconsin driver's license and the cashier examined it. The cashier then completed the sale. As Mr. Grober was leaving the store with the beer, the cashier again asked to look at his driver's license. Mr. Gruber complied and the clerk appeared to be checking the license against a calendar. After doing this the clerk returned the identification and told Mr. Gruber to have a nice day.

7. Mr. Gruber took the 12 pack of beer to the squad car and then filled out a form for the police officers that described the transaction. The police officers put the 12 pack of beer into the trunk of the squad car.

8. The police officers then proceeded into the liquor store and located a gray haired elderly gentleman wearing glasses at the counter and advised him that he had sold alcohol to an underaged individual. The cashier did advise the officers that he had checked the ID twice. The cashier was then issued a citation for violation of the city ordinance prohibiting sale of alcohol to a minor.^[4]

9. Mr. Gruber was wearing khaki pants and a polo shirt. He had a goatee and was wearing glasses. He would become 21 years of age approximately three weeks later.

10. MGM Liquor Warehouse has two recent prior violations of the liquor law. On November 14, 1998, the licensee sold liquor to a minor at which time the identification of the minor was not checked. On October 28, 1999 an employee of MGM Liquor sold beer to a minor and no identification was requested.^[5]

11. On December 1, 1999 the Cottage Grove City Council imposed a fine of \$1,000.00 against MGM Liquor Warehouse for the October 28, 1999 violation. It was the second liquor violation within a 24 month period. The Council suspended \$500.00 of the fine provided that there were no further violations within 24 months.^[6]

12. A resolution of the City Council passed April 5, 2000^[7] provides that a sanction for a violation of city or state liquor regulations is \$500.00 for the first violation, up to \$1,000.00 for the second violation within a 24 month period and up to \$1,500.00 for a third violation within a 24 month period.

13. The MGM Liquor Warehouse has company work rules that must be signed by each employee, that advises the employee that disciplinary action will be taken if the employee engages in the illegal sale of alcohol to minors.^[8]

14. A separate policy/procedure governing the sale of alcohol, which must also be signed by an employee, advises employees that it is illegal to sell to customers under the age of 21 years and states that if a person does not appear to be at least 35 years old it is mandatory to check their ID. It advises the employee that if he or she is caught transacting an illegal sale in violation of the policy, they will be terminated immediately.^[9]

15. All employees of MGM Liquor Warehouse must complete the beverage alcohol training (BAT) program sponsored by the Minnesota Licensed Beverage Association. This is a two hour training which includes a video presentation and a test for the participant. It instructs employees on how to identify minors and procedures for checking identification.^[10]

16. In response to the 1998 and 1999 violations the licensee decided that it would begin to check the identification of all customers. This policy was instituted in the fall of 1999. This requirement was posted at the store.^[11] This policy has been maintained although it is not popular with older customers.

17. In January or February of 2000 the licensee also instituted a program of internal compliance checks. Failure to pass the compliance check results in fines or progressively serious disciplinary action for employees under the policy.^[12]

18. The cashier that sold the beer to the minor on February 26, 2000 was not disciplined under the above policy.

19. The City of Cottage Grove served a notice of hearing on MGM Liquor Warehouse by certified mail on April 21, 2000. The notice set the hearing for May 11, 2000.^[13]

20. These findings are based on all of the evidence in the record. Citations portions of the record are not intended to be exclusive references.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Cottage Grove City Council and the Administrative Law Judge have jurisdiction in this matter under Minnesota law.^[14]

2. That the City gave the licensee timely and proper notice of the hearing in this matter and that the City has complied with all of the laws substantive and procedural requirements.

3. Minnesota law concerning the sale of intoxicating liquors provides in part that "it is unlawful for any person: (1) to sell, barter, furnish or give alcoholic beverages to a person under 21 years of age;"^[15]

4. Minnesota law also provides that:

Every licensee is responsible for the conduct in the licensed establishment and any sale of alcoholic beverage by any employee authorized to sell alcoholic beverages in the establishment is the act of the licensee for the purposes of all provisions in this chapter except sections 340A.701, 340A.702, and 340A.703.

5. The City has the burden of proving that MGM Liquor Warehouse violated the laws concerning the sale of intoxicating liquors.

6. That the City has proved by preponderance of the evidence that on February 26, 2000 the licensee's employee sold alcohol to a minor in violation of state law.

7. Minnesota law authorizes the City Council, upon a finding that a liquor licensee has violated the law prohibiting the sale of alcoholic beverages to persons under the age of 21, to:

revoke the license or permit, suspend the license or permit for up to 60 days, impose a civil penalty of up to \$2,000.00 for each violation, or impose any combination of these sanctions.^[16]

8. By resolution the City Council has adopted a policy of imposing a penalty of \$500.00 for the first violation of the law prohibiting the sale of an alcoholic beverage to a minor, a fine of up to \$1,000.00 for a second violation within a 24 month period, and a fine of up to \$1,500.00 for a third violation within a 24 month period.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: That the Cottage Grove City Council impose an appropriate penalty against the licensee, MGM Liquor Warehouse.

Dated this 16th day of May 2000.

S/ George A. Beck

GEORGE A. BECK

Administrative Law Judge

NOTICE

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

There is little dispute between the parties as to the facts of this matter. The licensee admits that a sale of beer to a minor took place at its place of business on February 26, 2000. The sale occurred as a result of a compliance check by the City of Cottage Grove, Department of Public Safety. The minor employed by the police department in the compliance check was properly instructed and followed those instructions in his purchase of alcohol at the MGM Liquor Warehouse.

The Licensee has contested this proceeding in order to bring two matters to the attention of the decision maker. First, it believes that the circumstances of the compliance check should be considered in arriving at a penalty in this matter. Secondly, the licensee argues that it took reasonable steps to comply with the law even though a violation did admittedly occur.

The Licensee argues that mitigating circumstances in regard to the compliance check include the fact that the minor used to purchase alcohol was three weeks shy of his 21st birthday and was sporting facial hair in the form of a goatee. It points out that the minor had a Wisconsin driver's license. Additionally, the cashier or clerk did check the minor's identification twice in an attempt to be sure of his age. The clerk is 64 years of age and will retire in six months.

The Licensee also points out that it has taken steps to prevent the sale of alcohol to minors. The record indicates that its clerks have called the police to the store on

occasion when an underage sale was attempted. It requires employees to sign company work rules and policies and procedures governing the sale of alcohol which spells out the need to check identification and to not sell alcohol illegally to minors. The policy also points out the disciplinary action that will be taken for violation of the policies. MGM also requires each employee to take the beverage alcohol training course sponsored by the Minnesota License Beverage Association.

After violations at its Cottage Grove location in 1998 and 1999, the Licensee implemented two further measures. Since the fall of 1999 it has instituted a policy of checking all ID's regardless of age. Secondly, early this year it has instituted a program of internal compliance checks and fines or other disciplinary action for employees who fail the compliance checks.

The City argues that a penalty of \$1,500.00 is appropriate under the City resolution, for a third violation in 24 months. As the City notes the liquor license statute authorizes penalties up to \$2,000.00 per violation. Additionally, the City urges that the \$500.00 suspended portion of the penalty assessed in December of 1999 now be imposed. That suspended portion of the 1999 penalty was suspended on the condition that there be no further violations within 24 months, a condition which has now been violated.

It is the policy of the Office of Administrative Hearings, as approved by the Minnesota Court of Appeals,^[17] not to recommend specific disciplinary action in license cases. Generally, a City has broad discretion in selecting an appropriate penalty.^[18]

Each case must be examined on its particular facts. The city's resolution authorizes a penalty for this violation up to \$1,500.00 in this case. Additionally it must decide whether to impose the suspended \$500.00 penalty at this point. It is recommended that the City Council examine both the circumstances of the compliance check as well as the efforts of the Licensee to prevent illegal sales, in arriving at an appropriate penalty.

G.A.B.

^[1] Minn. Stat. § 14.61.

^[2] Minn. Stat. § 34A.503, subd. 2.

^[3] Ex. 1.

^[4] Ex. 4.

^[5] Ex. 5.

^[6] Ex. 6.

^[7] Ex. 3.

^[8] Ex. A.

^[9] Ex. B.

^[10] Ex. C.

^[11] Ex. D.

^[12] Ex. E.

^[13] Ex. 2.

^[14] Minn. Stat. § § 14.50 and 340A.503.

^[15] Minn. Stat. § 340A.503, subd. 2(1).

^[16] Minn. Stat. § 340A.415.

^[17] Padilla v. Minnesota Board of Medical Examiners, 382 N.W. 2d 876, 886-87 (Minn. Ct. App. 1986).

^[18] Country Liquors v. City Council of the City of Minneapolis, 264 N.W. 2d 821, 824-826 (Minn. 1978).